

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HARRY WALTER LOOMIS,

Defendant-Appellee.

UNPUBLISHED

October 1, 1996

No. 183671

LC No. 94-131268-FH

Before: J.H. Gillis, P.J., and G.S. Allen and J.B. Sullivan, JJ.*

MEMORANDUM.

Defendant pleaded nolo contendere to assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and aggravated assault, MCL 750.81a; MSA 28.276(1). Defendant was sentenced to one year in jail, which time would be reduced by two months if defendant paid restitution. Plaintiff appeals as of right. We remand for resentencing. This case has been decided without oral argument pursuant to MCR 7.214(E)(1)(b).

On appeal, the prosecution argues that defendant's sentence is disproportionate in light of the severity of the crime and injuries sustained. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We agree. After arguing with his estranged wife in his truck, defendant punched her repeatedly in the face and head, dragged her along side the truck for several feet while driving and left her lying unconscious in a parking lot in sub-zero temperatures. Defendant's sentence should not have been at the low end or below the guidelines. Accordingly, defendant's sentence of one year in jail is disproportionate to the seriousness of the circumstances surrounding the offense and the offender. *Id.* We therefore remand the case for resentencing. Since defendant's plea was tendered pursuant to *People v Cobbs*, 443 Mich 276; 505 NW2d 208 (1993), he shall be given an opportunity to withdraw his plea if the trial court does not comply with the *Cobbs* agreement on remand. *Id.*, 283.

*Former Court of Appeals judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1996-3.

Remanded for resentencing. We do not retain jurisdiction.

/s/ John H. Gillis

/s/ Glenn S. Allen, Jr.

/s/ Joseph B. Sullivan